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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of



DECISION

KIN/145510

PRELIMINARY RECITALS

Pursuant to a petition filed November 26, 2012, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Perez-Pena Limited in regard to Kinship Care, a hearing was held on February 14, 2013, at Milwaukee, Wisconsin. The record was held open for 7 days to allow the Petitioner to submit additional information. The Petitioner submitted additional information and the record was closed on February 21, 2013.

The issue for determination is whether the agency properly denied KC benefits to the Petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Sharon Thacker, Kinship Care Worker
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. On October 18, 2012, the Petitioner submitted an application for Kinship Care (KC) benefits for her grand-nieces, FS (4 years old) and NB (11 years old). She has been caring for FS and NB since they were babies.
3. Petitioner has had guardianship of the children since January 16, 2010 pursuant to Chapter 54, Wis. Stats.
4. In or about June, 2012, NB, the mother of FS and NB (child), picked up the children from the Petitioner's home for a visit. NB (mother) lives in Texas with the father of FS. The agency did not speak with FS.
5. NB (mother) did not return the children to the Petitioner's home as agreed. Petitioner was unaware of the children's whereabouts until located by a social service agency in October, 2012.
6. NB (mother) is unemployed, living in Texas, has a stable residence with FS's father, has a history of AODA issues including alcohol and marijuana, has neglected the children as babies due to AODA issues, no mental health issues or incarcerations. There is reported history with CPS for neglect.
7. The whereabouts of NB's father are unknown.
8. On November 16, 2012, the agency issued a Notice of Non-Approval of KC Payment to the Petitioner due to the children not meeting criteria in s. 48.13, Wis. Stats.
9. On November 26, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Kinship Care benefit is a public assistance payment of \$220 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLRR) Aid to Families with Dependent Children (AFDC) payment (see, Wis. Stat. § 49.19). To be eligible for the payments thereunder, the relative must meet all of the conditions set forth in Wis. Stat. §§ 48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6). See also, Wis. Admin. Code ch. DCF 58.

The eligibility/review criteria for a relative who is a guardian under §48.977 versus a relative who is not a §48.977 guardian are different. There is no evidence in the record that the petitioner is a §48.977 guardian. The Petitioner did provide evidence of a Chapter 54 guardianship of both children but such guardianship is not dispositive of a finding of children in need of protection and services.

For Kinship Care cases in which the relative is not a §48.977 guardian, all of the conditions listed in §48.57(3m)(am) must be met. The pertinent "conditions specified in par. (am)" here are as follows:

1. The kinship care relative applies to the county department or department for payments under this subsection and the county department or department determines that there is a need for the child to be placed with the kinship care relative and that the placement with the kinship care relative is in the best interest of the child.
2. The county department or department determines that the child meets one or more of the criteria specified in s.48.13 or 938.13 or that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home.

Id., (3m)(am)1,2.

The Petitioner's residence is suitable for the children. The Petitioner takes good care of them and has created a safe and stable environment for them. Accordingly, the placement satisfies the "need for the

child's placement" criterion described at Wis. Stats. §48.57(3m)(am)1. However, the agency's basis for discontinuance was that the children do not meet one of the criteria at Wis. Stat. §48.13 and therefore do not meet the condition in §48.57(3m)(am)2.

The list of §48.13 criteria is as follows:

48.13 Jurisdiction over children alleged to be in need of protection or services. Except as provided in s. 48.028 (3), the court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and: . . .

(10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;

(10m) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;

. . .

Wis. Stats. §48.13.

The only criteria in §48.13 that appear to be applicable for consideration of this situation are (10) and (10m). The Petitioner indicates that NB (mother) has occasional contact with the children so they have not been abandoned by her. The agency assessment report indicates that there is a CPS history of neglect of the children and NB (mother) has a history of AODA issues that contributed to the neglect. The Petitioner testified that NB (mother) continues to have AODA issues. She also testified that NB (mother) would not let her talk with the children when they visited her last summer in Texas but at one point, NB (child) answered the phone and asked the Petitioner to come and get them. The Petitioner testified that there were allegations made by the children of being mistreated by their mother and police and social service involvement. The Petitioner testified that NB (mother) moved with the children and she was unable to locate them until a social service agency and police found them and brought them back to the Petitioner's home. The Petitioner testified that NB (mother) has rare contact with the children since. She provides no financial support to them.

Though most of the evidence is hearsay testimony, I found the Petitioner to be credible with regard to NB's history of AODA issues and CPS involvement. The agency assessment report also references the CPS history of neglect and AODA issues. Based on this evidence, I conclude that the children meet the criteria in § 48.13(10m) as children at substantial risk of neglect for reasons other than poverty based on reliable and credible information that their parents have neglected or refused to provide necessary care.

CONCLUSIONS OF LAW

The children meet the criteria of §48.13(10m), Wis. Stats. The agency did not properly deny KC payments to the Petitioner.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency with instructions to rescind and reverse the denial of the Petitioner's application for Kinship Care and establish her as eligible for Kinship Care benefits for N B and FS retroactive to the Petitioner's application date. This action shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

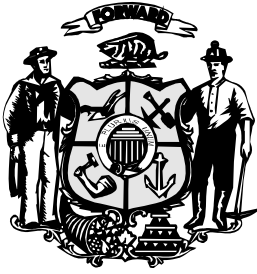
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of March, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 20, 2013.

Perez-Pena Limited
DCF - Kinship Care
DCF - Kinship Care